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APPLICATION NO.		FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/835,818 04/17/2001		Kelvin G.M. Brockbank	105452 5532		
25944	7590	06/17/2002			
OLIFF &	BERRID	GE, PLC	EXAMINER		
P.O. BOX 19928 ALEXANDRIA, VA 22320				SANDALS, WILLIAM O	
				ART UNIT	PAPER NUMBER
				1636 DATE MAILED: 06/17/2002	8

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No. 09/835,818 Applicant(s)

Brockbank et al.

Examiner

William Sandals

Art Unit 1636

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIREMONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE		The MAILING DATE of this communication appears	on the cover she	et with	the correspondence address			
THE MAILING DATE OF THIS COMMUNICATION. Librations of term by te available user the provisions of 3 CFR 1.13 fel. II. no event, however, may a right be timely field after SR (6) MONTHS from the melting date of the communication. If the price for early a specified door, the meaninum stantory parted with apply and will apply and value against the considered timely. If the price for early a specified show, the meaninum stantory parted with apply and will apply and value against the considered timely. If the price for early a specified show, the meaninum stantory parted with apply and will apply and value against the consideration. If the price for early a specified show, the meaninum stantory parted with apply and will apply and value against the consideration. If the price for early a specified show, the meaninum stantory parted will apply and value against the consideration and the communication. Any reply received by the Office later the them been considerated and the communication, and if it may replace any secret parted and the communication and the com	Period 1	for Reply						
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If the period for right specified above is less than thirty (30) days, a regly within the saturory minimum of thirty (30) days will be considered marky. If NO period for right is specified date, the makinum statutory period will septly and will be grown than the realized set of the communication. Father to right within the set of extended pared for right will, by stratute, cause the epidecion to become ABAPONED 13 U.S.C. § 1131. Any righty necessity of the Office set the marking date of this communication, even if through filed, may reduce any septem series epigeness by an office set the marking date of this communication, even if through filed, may reduce any series of the profit of the pr								
1) Responsive to communication(s) filed on Sep 7, 2001 2a) This action is FINAL. 2b) This action is non-final. 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213. Disposition of Claims 4 Claim(s) 1-19	- If the p - If NO p - Failure - Any re	period for reply specified above is less than thirty (30) days, a reply within the period for reply is specified above, the maximum statutory period will apply a to reply within the set or extended period for reply will, by statute, cause the ply received by the Office later than three months after the mailing date of the second seco	and will expire SIX (6) Notes that the second in the secon	MONTHS f	rom the mailing date of this communication. ONED (35 U.S.C. § 133).			
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day of the above, claim(s) is/are withdrawn from consideration.	Disposi	tion of Claims						
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Some Claim(s)	5) 🗆	Claim(s)			is/are allowed.			
are subject to restriction and/or election requirement. Application Papers 9	6) 🗀	Claim(s)			is/are rejected.			
Application Papers 9) The specification is objected to by the Examiner. 10) The drawing(s) filled on	7) 🗌	Claim(s)			is/are objected to.			
9 The specification is objected to by the Examiner. 10 The drawing(s) filed on	8) 💢	Claims <u>1-19</u>	are	subject	to restriction and/or election requirement.			
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The proposed drawing correction filed on	10)	The drawing(s) filed on is/are	a) 🗆 accepted	or b)	\square objected to by the Examiner.			
If approved, corrected drawings are required in reply to this Office action. 12 The oath or declaration is objected to by the Examiner. Priority under 35 U.S.C. §§ 119 and 120 13 Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some* c None of: 1. Certified copies of the priority documents have been received. 2. Certified copies of the priority documents have been received in Application No 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). *See the attached detailed Office action for a list of the certified copies not received. 14} Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e). a) The translation of the foreign language provisional application has been received. 15] Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121. Attachment(s) 1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s)		Applicant may not request that any objection to the d	drawing(s) be held	in abe	yance. See 37 CFR 1.85(a).			
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DETAILED ACTION

Election/Restriction

- 1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - Claims 1-10, drawn to a method of cryopreserving cells, classified in class 435, subclass 374.
 - II. Claims 11-19, drawn to a cryopreservation composition of a cyclohexanediol compound, classified in class 514, subclass 763.
- 2. The inventions are distinct, each from the other because of the following reasons:

 Inventions of Groups I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the method of cryopreservation may be practiced with any of a variety of non-cyclohexanediol cryopreservatives such as alcohols and proteins.
- 3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

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4. Claims 1 and 4 are generic to a plurality of disclosed patentably distinct species comprising the cryoprotectants of claim 5. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

5. Claim 10 is generic to a plurality of disclosed patentably distinct species comprising the cryoprotectants of claim 14. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

6. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

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7. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Conclusion

8. Certain papers related to this application are *welcomed* to be submitted to Art Unit 1636 by facsimile transmission. The FAX numbers are (703) 308-4242 and 305-3014. The faxing of such papers must conform with the notices published in the Official Gazette, 1156 OG 61 (November 16, 1993) and 1157 OG 94 (December 28, 1993) (see 37 CFR 1.6(d)). NOTE: If applicant *does* submit a paper by FAX, the original copy should be retained by the applicant or applicant's representative, and the FAX receipt from your FAX machine is proof of delivery. NO DUPLICATE COPIES SHOULD BE SUBMITTED, so as to avoid the processing of duplicate papers in the Office.

Any inquiry concerning this communication or earlier communications should be directed to Dr. William Sandals whose telephone number is (703) 305-1982. The examiner normally can be reached Monday through Thursday from 8:30 AM to 7:00 PM, EST. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Remy Yucel can be reached at (703) 305-1998.

Any inquiry of a general nature or relating to the status of this application should be directed to the Zeta Adams, whose telephone number is (703) 305-3291.

William Sandals, Ph.D.

Examiner

June 15, 2002